



NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re:	)	Case No.: 2:15-bk-25283 RK
)	
ARTURO GONZALEZ, an individual, dba Long	)	Chapter 7
Beach Realty, Inc., dba South Bay Realty; dba)	
Mindset, aka Art Gonzalez; aka Art Gonzalez, Jr.,	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW RE:
Debtor.	)	MOTION BY THE CHAPTER 7
	)	TRUSTEE OBJECTING TO THE
	)	DEBTOR'S CLAIMED EXEMPTION
	)	FOR CERTAIN PERSONAL
	)	PROPERTY ASSETS
)	
	)	Date: March 8, 2016
	)	Time: 2:30 p.m.
	)	Place: Courtroom 1675
	)	Roybal Federal Building
	)	255 E. Temple Street
	)	Los Angeles, CA 90012-3300

The "Motion by the Chapter 7 Trustee Objecting to the Debtor's Claimed Exemption for Certain Personal Property Assets" ("Motion") came on for hearing before the undersigned United States Bankruptcy Judge on March 8, 2016. The Movant and Chapter 7 Trustee, Wesley H. Avery ("Trustee"), was represented at the hearing on the Motion by Brett B. Curlee of the Law Offices of Brett Curlee. The Respondent and Debtor, Arturo Gonzalez ("Debtor"), was represented by Anerio V. Altman, of the law firm of Lake Forest Bankruptcy.

Having considered the Motion, Document No. 48 on the docket of this case, the Request

1 for Judicial Notice (“RJN”) in Support of the Motion, Document No. 50 on the case docket, the
2 Debtor’s Opposition to the Motion (“Opposition”), Document No. 57 on the case docket, and the
3 Trustee’s Reply to the Opposition (“Reply”), Document No. 60 on the case docket, and the
4 declarations and documentary evidence submitted in support of and in opposition to the Motion,
5 and having heard the oral arguments of Counsel at the time of the hearing on the Motion, and that
6 there was no objection to the evidence submitted in support of the Motion or in Opposition to the
7 Motion, the court hereby makes the following findings of fact and conclusions of law pursuant to
8 Rule 7052 of the Federal Rules of Bankruptcy Procedure and Rule 52 of the Federal Rules of
9 Civil Procedure:
10

11 FINDINGS OF FACT

12
13 1. On October 5, 2015, the Debtor filed his petition for relief under Chapter 7 of the
14 Bankruptcy Code, 11 U.S.C, commencing this bankruptcy case, In re Arturo Gonzalez, dba Long
15 Beach Realty, Inc.; dba South Bay Realty; dba Mindset; aka Art Gonzalez; aka Art Gonzalez, Jr.,
16 No. 2:15-bk-25283 RN (“Bankruptcy Case” or “Estate”). RJN, Ex. 1 at 6-8.

17 2. According to the Debtor, he has been involved in Real Estate over the last ten
18 years and has been involved in hundreds of real estate transactions. Declaration of Arturo
19 Gonzalez in Support of the Opposition (“Gonzalez Decl.”) at 2:5-18. On his original “Schedule
20 B-Personal Property” to his bankruptcy petition, the Debtor listed his business, Long Beach
21 Realty, Inc. and its assets, as Estate assets, including a bank account of \$1,100.00, accounts
22 receivable of \$9,500.00, and business equipment valued at \$400.00. RJN, Ex. 1 at 10.

23
24 3. On February 4, 2016, Amended Schedules “B” and “C” (“Second Amended
25 Schedules”) were filed. RJN, Ex. 3 at 26-32. In Second Amended Schedule “C,” Debtor claimed
26 C.C.P. § 703.140(b)(5) and (b)(1) exemptions totaling \$26,925.00, including, cash on hand at the
27 time of bankruptcy of \$1,500.00, a Bank of California Checking Account valued at \$800.00, and a
28

1 \$21,125.00 exemption in the value of Long Beach Realty, Inc.'s assets, including Commissions
2 totaling \$44,303.00, \$1,100.00 in Long Beach Realty Inc.'s bank account, and \$400.00 for
3 business equipment. RJN, Ex. 3 at 26-32. The Debtor claimed a C.C.P. § 703.140(b)(5)
4 exemption of \$2,500.00 in value in the Trademark "Mindset," and \$1,000.00 in the value of some
5 business inventory from a prior business venture. RJN, Ex. 3 at 29. In addition to C.C.P. §
6 703.140(b)(5) exemptions of \$21,125.00 in the value of Long Beach Realty Inc.'s assets, the
7 Debtor claimed an exemption under C.C.P. §703.140(b)(6) of \$7,625.00 in Long Beach Realty,
8 Inc. for a total of \$28,750.00 in exemptions in Long Beach Realty and its assets. RJN, Ex. 3 at
9 31-32.
10

11 4. Based on the hearing held February 19, 2016 on the Trustee's Motion for
12 Preliminary Injunction and Turnover in the related adversary action, Wesley H. Avery, as Chapter
13 7 Trustee for the Bankruptcy Estate of Arturo Gonzalez v. Arturo Gonzalez, dba Long Beach
14 Realty, Inc.; dba South Bay Realty; dba Mindset; aka Art Gonzalez; aka Art Gonzalez, Jr., Adv.
15 Case No. 2:16-ap-01037-RK ("Related Action"), and the Court's order entered thereon
16 ("Turnover Order"), document No. 19 on the case docket, which is Exhibit "4" to the Trustee's
17 Reply, this court previously found that the amount of the Commissions in dispute is \$44,804.00.
18 [Reply, Supplemental Declaration of Brett Curlee ("Supp. Curlee Decl."), ¶ 3 and Ex. 4 to Reply.
19 The accounting provided by the Debtor to the Trustee of Commissions received, attached as
20 Exhibit "5" to the Reply likewise shows the pre-petition Commissions that funded post-petition
21 total \$44,804.00. Curlee Supp. Decl., ¶ 4, and Ex. 5 to Reply.
22

23 5. The Debtor and the Trustee agreed on the record at the hearing on the Trustee's
24 Motion for Preliminary Injunction and Turnover that the Trustee does not dispute the Debtor's
25 claimed exemption in the Commissions in the amount of \$20,200.00 and the Debtor does not
26 dispute that the amount of \$16,054.00 of the Commissions are non-exempt and belong to the
27
28

1 Estate. Reply, Curlee Supp. Decl., ¶ 2 and 3, and Ex. 4 to Reply. Thus, at the hearing on the
2 Motion, the Debtor and the Trustee agreed the remaining amount of Commissions whose exempt
3 status is still in dispute was the balance of \$8,550.00 (“Disputed Commissions”). Pursuant to the
4 court’s Turnover Order, Debtor’s attorney is holding the Disputed Commissions of \$8,550.00
5 pending resolution of the Motion. Reply, Supp. Curlee Decl., ¶¶ 2 and 3 and Ex. 4 to Reply.
6

7 6. The Debtor and the Trustee both agreed on the record at the hearing on the Motion
8 that the primary issue remaining before this Court on the Motion is whether the Debtor can
9 exempt all \$8,550.00 of the Disputed Commissions under C.C.P. §703.140(b)(6) as “implements,
10 professional books, or tools of the trade of the debtor. . . .” The Trustee disputes Debtor’s claimed
11 exemption, and he contends that none of the Disputed Commissions are exempt under C.C.P. §
12 703.140(b)(6) and that all of these Commissions must be turned over to the Trustee. This issue is
13 a legal issue which the court discusses and resolves in the Conclusions of Law set forth below.
14

15 7. There is a relatively minor factual issue raised by the Debtor in the Opposition,
16 who argues that the amount of funds in Long Beach Realty, Inc.’s bank account as stated in
17 Second Amended Schedules “B” and “C” of \$1,100.00 was in error. The Debtor in his
18 Opposition contends that the account held \$379.62 in available funds on the date of bankruptcy,
19 not \$1,100.00, thus making the value of Long Beach Realty, Inc.’s total assets \$45,082.62, not
20 \$45,803.00. Opposition at 6:4. Debtor argues that thus, he can claim a further exemption of
21 \$720.38 under C.C.P. §703.140(b)(5) and (b)(1) for a total of \$20,920.38 in total exempt
22 Commissions under C.C.P. §703.140(b)(5) and (b)(1). The Debtor did not provide any testimony
23 or documentary evidence with the Opposition in support of this argument to demonstrate his claim
24 to an additional exemption of \$720.38 under C.C.P. §703.140(b)(5) and (b)(1) in the Disputed
25 Commissions. Specifically, Long Beach Realty, Inc.’s Banc of California bank statement for the
26 period 10/01/2015 to 10/30/2015 was produced to the Trustee by the Debtor on February 11, 2016
27
28

1 and is attached as part of Exhibit “5” to the Reply. Reply, Supp. Curlee Decl., ¶ 4, and Ex. 5 to
2 Reply. This bank statement shows that the Debtor deposited checks totaling \$3,910.00 on
3 October 5, 2015 and that the daily balance in that account on that date was \$1,480.78. Reply,
4 Supp. Curlee Decl., ¶ 4, and Ex. 5 to Reply. Accordingly, based on this uncontroverted evidence,
5 the court finds that there was at least \$1,100.00 in cash or cash equivalent assets in Long Beach
6 Realty Inc.’s bank account on the date of bankruptcy and therefore, there is no factual basis to
7 claim a greater exemption in the Commissions based on a lower balance in the Long Beach Realty
8 bank account than as stated on the schedules.
9

10 CONCLUSIONS OF LAW

11 1. To obtain a fresh start, the Bankruptcy Code allows a debtor to exempt from the
12 estate limited interests in certain kinds of property. *Clark v. Rameker*, 134 S.Ct. 2242, 2244-2245
13 (2014)(citation omitted); *see also*, *Schwab v. Reilly*, 560 U.S. 770, 791, 130 S.Ct. 2652, 2667
14 (2010). Under 11 U.S.C. §522(b) and (d), a debtor is not entitled to exempt property itself, only an
15 *interest* therein up to a specified dollar amount. *Schwab v. Reilly*, 560 U.S. at 791-792 (citation
16 omitted).
17

18 2. The Bankruptcy Code provides a set of exemptions debtors may claim in lieu of
19 exemptions they may claim under state law; however, the Bankruptcy Code specifically reserves
20 to the states the right to opt-out of the Bankruptcy Code exemptions and to limit exemptions a
21 debtor may claim to exemptions provided by state law. 11 U.S.C. § 522(b)(1) and (d); *In re*
22 *Applebaum*, 422 B.R. 684, 688 (9th Cir. BAP 2009). California is an opt-out state. C.C.P. §
23 703.140(a); C.C.P. § 703.140(b); C.C.P. § 704.010 et seq.; *In re Applebaum*, 422 B.R. at 688.
24 The Debtor may only claim exemptions allowed by California law. *Id.*
25

26 3. A debtor in a bankruptcy case may choose between California bankruptcy-only
27 exemptions in C.C.P. § 703.140(b) or the regular California non-bankruptcy state law exemptions
28

1 in C.C.P. § 704.010 et seq. *See, In re Applebaum*, 422 B.R. at 688. The court finds the Debtor
2 has elected and received the benefits of the California bankruptcy-only exemptions under C.C.P. §
3 703.140(b)(1) and (b)(5) in regards to Commissions totaling \$20,200.00 and that the Trustee has
4 received undisputed non-exempt Commissions belonging to the bankruptcy estate in the amount
5 of \$16,054.00.
6

7 4. As discussed below, the court denies the Debtor's exemption as to the Disputed
8 Commissions in entirety because the funds representing the Disputed Commissions are not "tools
9 of trade" within the meaning of the statute, C.C.P. § 703.140(b)(6). In his Opposition to the
10 Motion, Debtor characterizes the Disputed Commissions as "liquidated capital," "business
11 capital," "cash capital," or "operating capital" that the Debtor can use to run his business.
12 Opposition at 2:9-14 and 4:16-24, Gonzalez Decl. at 2, ¶¶ 6 and 7 and 3, ¶ 9.
13

14 5. C.C.P. § 703.140(b)(6) states that a debtor may exempt the aggregate interest not
15 exceeding \$7,625.00 in value "in any implements, professional books, or tools of the trade of the
16 debtor" California statutory exemption statutes are generally interpreted in accordance with
17 their plain meaning. *Kono v. Meeker*, 196 Cal.App.4th 81, 88 (2011). The express language of
18 C.C.P. § 703.140(b)(6) only lists tangible items of personal property, i.e., implements,
19 professional books and tools, and the statute does not list "working cash or capital" as a category
20 of exempt property.
21

22 6. Thus, the court in *C.F. Neilsen, Inc. v. Stern*, based on the usual and ordinary
23 meaning of the express language of the statute, C.C.P. § 703.140(b)(6) and the relevant case law,
24 the same case law cited by the Debtor and discussed below, held that exempt property under this
25 statute only included "those tools, equipment, and other items of tangible property which are
26 reasonably necessary and actually used by a judgment debtor in pursuing his livelihood." *C.F.*
27 *Neilsen, Inc. v. Stern*, 11 Cal.App.4th Supp. 22, 24-25 (1992)(holding that funds in a lawyer's
28 business banking account are not exempt tools of trade under C.C.P. § 704.060(a)). The plain

1 meaning of the statute allows an exemption only in: “Those tools, equipment, and other items of
2 tangible property which are reasonably necessary and actually used by a debtor in the pursuing his
3 livelihood.” *C.F. Neilsen, Inc. v. Stern*, 11 Cal.App.4th Supp. at 25; *see also, Kono v. Meeker*,
4 196 Cal.App.4th at 84-85 (inventory is not a “tool of the trade” under C.C.P. § 704.060 because
5 the statutory intent is to protect basic tools and utensils necessary to aid the debtor in continuing
6 his means of livelihood.) Money is a medium of exchange and should not be exempt under
7 C.C.P. § 704.060 because it is not a physical or tangible item of personal property like a tool,
8 utensil or piece of equipment reasonably necessary and actually used in a trade. *See also, In re*
9 *Oakley*, 344 F.3d 709, 710-714 (7th Cir. 2003)(cash as financial asset was an “intangible” in the
10 nature of reserves having “exchange value” and not protected by an exemption of \$4,000 under
11 Indiana law for a debtor’s tangible property that a person needs to survive as a self-respecting
12 citizen, i.e., debtor’s clothes, dishes, towels, toilet paper, appliances, work tools and furniture, as
13 that would make it impossible for the debtor to function); *In re Hokulani Square, Inc.*, 460 B.R.
14 763, 769-771 (9th Cir. BAP 2011)(discussing money as “medium of exchange” which is
15 according to dictionary definitions “commonly accepted in exchange for goods and services” or
16 “used in transactions in a trading system”).

17 7. The Debtor cited several cases for the proposition that “capital” constitutes a tool
18 of the trade, but the court determines that these cases cited do not support the conclusion that the
19 Disputed Commissions may be exempted under C.C.P. § 703.140(b)(6). *In re Peterson*, 95 F.
20 417, 419 (N.D.Cal.1899)(a debtor is entitled to exempt baking implements he and his journeymen
21 assistants use to carry on the business of a baker); *In re McManus*, 87 Cal. 292, 293-294 (1890)(a
22 safe used by a jeweler in his watch repair business is an exempt tool of the trade.); *Sun Limited v.*
23 *Casey*, 96 Cal.App.3d 38, 40-42 (1979)(a real estate agent may claim as exempt an automobile
24 used as a tool of her trade); *In re Garcia*, 451 B.R. 909 (C.D. Cal. 2011)(a real estate agent is not
25 precluded as a matter of law from claiming as exempt her vehicle used as a tool of her trade, even
26 though it is a “luxury” vehicle); *Lopp v. Lopp*, 198 Cal.App.2d 474, 477 (1961)(an auto mechanic
27 may claim as exempt a pick-up truck used as a tool of his trade in the business of mounting and
28 retreading tires); *Peebler v. Danziger*, 104 Cal.App.2d 490, 491 (1951)(a cemetery sexton may

1 claim as exempt grave digging tools and lawn mowers used as tools of his trade). Many of these
2 cases cited by the Debtor were also cited by the court in *C.F. Neilsen, Inc. v. Stern*, 11
3 Cal.App.4th Supp. at 24-25, and really support the holding in *C.F. Neilsen, Inc. v. Stern* that only
4 tangible personal property reasonably necessary and actually used in a debtor's trade was exempt,
5 and not cash, which is a medium of exchange. *See, In re Oakley, supra*.

6 8. The court in *C.F. Neilsen, Inc. v. Stern*, the Appellate Department for the Los
7 Angeles County Superior Court, affirmed the trial court's ruling that the funds in the appellant's
8 business bank account were not exempt under C.C.P. § 704.060(a)(1) and (3). 11 Cal.App.4th
9 Supp. 22, 23-24 (1992). In 1992, at the time the case was decided, C.C.P. § 704.060(a)(1) and
10 (3) read as follows:

11 (a) Tools, implements, instruments, materials, uniforms, furnishings, books,
12 equipment, one commercial motor vehicle, one vessel, and other personal property
13 are exempt to the extent that the aggregate equity therein does not exceed:

14 (1) Two thousand five hundred dollars (\$2,500), if reasonably necessary
to and actually used by the judgment debtor in the exercise of the trade,
business or profession by which the judgment debtor earns a livelihood . . .

15 (2) Five thousand dollars (\$5,000), if reasonably necessary to and
16 actually used by the judgment debtor and by the spouse of the judgment debtor
in the exercise of the same trade, business, or profession by which both earn a
livelihood.

17 C.C.P. § 704.060 (1982), *available at*,
18 <http://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1982/82Vol4.pdf>
19 (Ch. 1364) at 5155 (amended 1995, 2003, 2013 and 2016).

20 In affirming the trial court's decision, which found that the appellant could not claim
21 C.C.P. § 704.060(a)(1) and (3) exemptions in his business bank account, the court in *C.F.*
22 *Neilsen, Inc. v. Stern* relied on the plain meaning of the statute and stated the following:

23 [t]he usual and ordinary meaning of the above quoted language and the relevant
24 case law pertaining to personal property exemptions indicate subdivisions (a)(1) and
25 (a)(3) of Code of Civil Procedure section 704.060 were intended to protect *only*
those tools, equipment, and other items of tangible property which are reasonably
necessary and actually used by a judgment debtor in pursuing his livelihood.

26 *C.F. Neilsen, Inc. v. Stern*, 11 Cal.App.4th Supp. at 25 (emphasis added).

27 Although *C.F. Neilsen, Inc. v. Stern* dealt with C.C.P. § 704.060 while the present matter
28 deals with C.C.P. § 703.140, the case is instructive because at the time that it was decided, the

1 language of C.C.P. §§ 703.140 and 704.060 were similar, the present operative language of
2 C.C.P. § 703.140 is the same today as it was when *C.F. Neilsen, Inc. v. Stern* was decided, and
3 therefore, the plain meaning interpretation that the court applied in *C.F. Neilsen, Inc. v. Stern*
4 would apply to C.C.P. § 703.140 today absent any intervening changes in legislative intent or
5 case law.

6 That is, in 1992, when *C.F. Neilsen, Inc. v. Stern* was decided, C.C.P. § 703.140, in
7 pertinent part, read as follows:

- 8 (b) The following exemptions may be elected as provided in subdivision (a) . . .
9 (6) The debtor's aggregate interest, not to exceed seven hundred fifty dollars
10 (\$750) in value, in any implements, professional books, or tools of the trade of
the debtor or the trade of a dependent of the debtor.

11 C.C.P. § 703.140 (1984), *available at*,

12 http://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1984/84Vol1_Chapters.pdf (Ch. 218) at 692-694 (amended 1993, 1995, 2000, 2001, 2003, 2012 and 2016). Thus,
13 in 1992, both C.C.P. §§ 703.140 and 704.060 dealt with a debtor's "tools of trade." Further,
14 today, although the exemption amount under C.C.P. § 703.140 has changed, the operative
15 language of the statute is the exact same. *See* California Code of Civil Procedure § 703.140
16 (2013)(although the statute was changed to increase the exemption amount in 2016, because the
17 present case was filed in 2015, the 2013 version of the statute applies). Moreover, in its research,
18 the court has not found any contrary legislative history or intervening case law that would alter
19 how the court should interpret and apply the statute. Based thereupon, the court determines that
20 like in *C.F. Neilsen, Inc. v. Stern*, where the court held that based on the plain meaning of C.C.P.
21 § 704.060, that statute was "intended to protect *only those tools, equipment, and other items of*
22 *tangible property* which are reasonably necessary and actually used by a judgment debtor in
23 pursuing his livelihood" and not a business bank account, the plain meaning of C.C.P. § 703.140
24 today is such that the statute is also only intended to protect those implements, professional
25 books and tools of the trade of the debtor, and not commissions in the Debtor's business bank
26 account.
27

28 9. The difference between an exempt tool of the trade and something else was

1 explained in *Kono v. Meeker*, where the debtors attempted to exempt “inventory” as tools
2 necessary to their trade. 196 Cal.App.4th at 88-89. The *Kono* court explained that the debtors do
3 not use their “inventory” in the same way a jeweler uses his safe in conducting his business
4 (*citing, McManus*, 87 Cal. at 293-294) or the way a traveling tire repairman uses his truck (*citing,*
5 *Lopp*, 198 Cal.App.2d at 477). *Kono v. Meeker*, 196 Cal.App.4th at 89. If a debtor has a special
6 knowledge or occupation, the tools necessarily used in that occupation are exempt. *Id.* at 89,
7 *citing, In re Vigil*, 101 B.R. 189, 190-191 (Bankr. N.D. Cal. 1989). In other words, the “tools of
8 the trade” are physical tools or implements immediately needed to be used by a debtor in the
9 practice of his trade, not the cash or capital necessary to fund a business as Debtor argues. *Id.* at
10 88 (“Historically, the tools and materials exempted from execution under section 704.060 and its
11 predecessor statute were the ‘utensils and implements’ owned and actually used by a debtor
12 tradesman in exercising the trade, business or profession by which he earns a living, or the
13 utensils and implements owned by a debtor in the ‘business’ of the trade who employed others to
14 assist him in doing the work.”), *citing, In re Petersen*, 95 F. at 419. The Debtor has failed to show
15 how the Commissions which are financial assets are physical “tools” or “implements” that are
16 reasonably necessary and actually used by him in his trade as a real estate broker to qualify as
17 exempt under C.C.P. § 703.140(b)(6). *Lopp v. Lopp*, 198 Cal.App.2d at 476-477.

18 10. The Debtor is attempting to claim the Disputed Commissions which have been
19 reduced to cash as an exempt tool of the trade to fund his business like the debtor in *C.F. Neilsen,*
20 *Inc. v. Stern*, and the Debtor here wants to use the Commission funds to pay office expenses and
21 for any purpose. Opposition, Gonzalez Decl. at 2:12-27 and 3:3-11. Following the ruling of the
22 court in *C.F. Neilsen, Inc. v. Stern*, the court determines that cash is not a tool or equipment used
23 in the Debtor’s trade or profession to qualify for the exemption under C.C.P. § 703.140(b)(6).

24 11. Accordingly, for the foregoing reasons, the court makes the following rulings:

- 25 A. The court denies the Debtor’s claimed exemption in the Disputed
26 Commissions under C.C.P. § 703.140(b)(6).
27 B. The court limits the Debtor’s exemption in Long Beach Realty, Inc. under
28 C.C.P. § 703.140(b)(6) to \$400.00 in the business equipment of Long

1 Beach Realty, Inc.

2 C. The court denies the Debtor's claimed exemption under C.C.P. §
3 703.140(b)(1) and (b)(5) in the additional amount of \$720.38 in the
4 Disputed Commissions.

5 D. The court limits the Debtor's exemption in the Commissions, which are
6 valued at \$44,804.00, to \$20,200.00 under C.C.P. §703.140(b)(5) and
7 (b)(1). The balance of the Commissions totaling \$24,604.00 are non-
8 exempt assets of the bankruptcy estate.

9 E. The Debtor is required to turn over to the Trustee the \$8,550.00 in Disputed
10 Commissions that the attorney for the Debtor is currently holding pursuant
11 to the Turnover Order in the Related Action.

12 A separate order granting the Motion in conformity with these Findings of Facts and Conclusions
13 of Law is being entered concurrently herewith.

14 IT IS SO ORDERED.

15 ###

16
17
18
19
20
21
22
23
24 Date: July 12, 2016



25 Robert Kwan
26 United States Bankruptcy Judge
27
28